TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~244.~~ 59

E. E. DOWNHAM AND HENRY GREEN, PARTNERS, AS DOWNHAM & CO., PLAINTIFFS IN ERROR,

vs.

THE CITY COUNCIL OF ALEXANDRIA.

IN ERROR TO THE FOURTH JUDICIAL DISTRICT COURT OF THE STATE OF VIRGINIA.

FILED JULY 29, 1869.

SUPREME COURT OF THE UNITED STATES.

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1 To the Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the United States:

The petition of E. E. Downham & Henry Green, partners, trading under the firm name of Downham & Co., respectfully represent, that they are aggrieved by a final judgment of the district court of appeals of Virginia for the fourth judicial district, which said court is the highest court of law of said State in which said judgment could be had, rendered in a certain action of debt, instituted by the City Council of Alexandria against your petitioners.

A transcript of the record of the judgment complained of is herewith presented.

It will appear that the city council of Alexandria, on the 8th day of June, 1867, passed an ordinance for raising revenue for that year, and imposing a tax upon all merchants, of an equal character; still further imposed an additional and specific tax of 200^{00} "on all agents or dealers in beer or ale by the cask not manufactured in this city
2 (Alexandria), and brought in here for sale."

Your petitioners, at the date of this ordinance, were conducting the business of liquor merchants, and dealing in beer and ale by the cask, which were not manufactured in Alexandria, and brought to that place for sale. Your petitioners paid to the said city council the general tax imposed on merchants.

It was maintained by your petitioners that said ordinance was in violation of the following clauses of the Constitution of the United States, and therefore unconstitutional and void:

1. Art. 1, sec. 8, ch. 3: "To regulate commerce with foreign nations and among the several States," &c.

The ordinance manifestly controls and regulates the introduction of ale and beer from other States by imposing a burthensome and discriminating tax on all such beer and ale manufactured outside of Alexandria.
(Steamship Co. vs. Portwardens, 6 Wall., p. 31; Crandell vs. State
3 of Nevada, 6 Wall., p. 35.)

2. It is in conflict with the 4th art., sec. 2, ch. 1: "The citizens of each State shall be entitled to all the privileges and immunities of citizens of the several States."

III. It, moreover, violates art. 1, sec. 10, ch. 2: "No State shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws."

The objects of the two sections, next above referred to, were intended to make interstate commerce as free as possible. The ordinance complained of violates not only the language but the spirit and policy of these constitutional provisions.

Judgment was awarded against your petitioners for the tax of 200^{00} by the circuit court for Alexandria County, which said judgment was affirmed by the district court of appeals of Virginia, on the ground that the said ordinance did not violate any provision of the Constitution of the United States.

4 For these and other errors your petitioners pray a writ of error to the judgment complained of.

The petitioners, by their counsel—

GEO. W. BRENT.
C. W. WATTLES.

We, George W. Brent and C. W. Wattles, attorneys and counsellors, practising in the Supreme Court of the United States, do certify that, in our opinion, there is sufficient matter for reversing the judgment complained of in the foregoing petition.

GEORGE WM. BRENT.
C. W. WATTLES.

(Indorsed:) Downham & Co. v. City Council of Alex'a. Petition and record.

Writ of error allowed as prayed, returnable to next term. Bond for costs required in two hundred and fifty dollars.

Mar. 9, '69. S. P. CHASE, *Ch. Jus. U. States.*

5 UNITED STATES OF AMERICA, *ss:*

[SEAL.] The President of the United States to the honorable the judges of the district court for the fourth judicial district of Virginia, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said district court for the fourth judicial district of Virginia, before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between E. E. Downham and Henry Green, partners, trading under the firm name of Downham & Co., appellants, and the City Council of Alexandria, appellees, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the de-

6 cision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the constitution, or of a treaty, or statute of, or commission held under, the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said appellants, as by their complaint appears, we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and custom of the United States should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court, the first Monday of December, in the year of our Lord one thousand eight hundred and sixty-eight.

D. W. MIDDLETON,
Clerk of the Supreme Court of the United States.

Issued 9th March, 1869.

7 Know all men by these presents that we, E. E. Downham & Henry Green, as principals, and Jos. Brodus, are held and firmly bound unto the City Council of Alexandria, in the full and just sum of two hundred and fifty dollars, to be paid to the said City Council of Alexandria, its certain attorney; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals, and dated this day of March, in the year of our Lord one thousand eight hundred and sixty-nine.

Whereas lately, at a district court of the fourth judicial district of Virginia, in a suit depending in said court, between Downham & Co., appellants, and the City Council of Alexandria, appellees, judgment was rendered against the said appellants, and the said appellants having obtained a writ of error and filed a copy thereof in the clerk's office of the said court, to reverse the judgment in the aforesaid suit, and a citation directed to the said City Council of Alexandria, citing and admonishing to be and appear at a Supreme Court of the United States, to be holden at Washington, the first Monday of December next:

Now, the condition of the above obligation is such, that if the said appellants shall prosecute the said writ to effect, and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

EMANUEL E. DOWNHAM. [L. S.]
HENRY GREEN. [L. S.]
JOS. BRODUS. [L. S.]

Sealed and delivered in presence of—
CHARLES E. STUART.

Approved by

S. P. CHASE, *Ch. J.*

(Indorsed in pencil:) Copy of bond. Return with transcript to Sup. C't U. S.

8 The United States of America to the City Council of Alexandria, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the district court for the fourth judicial district of Virginia, wherein E. E. Downham & Henry Green, partners, under the name & firm of Downham & Co., are plaintiffs in error, and you are defendant in error, to show cause, if any there be, why judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this day of March, in the year of our Lord one thousand eight hundred and sixty-nine.

S. P. CHASE.

Service acknowledged April 7, 1869.

S. FERGUSON BEACH,
Att'y for City Council of Alexandria.

10[1] District court of appeals.—District IV.

DOWNHAM & CO.
vs.
THE CITY COUNCIL OF ALEX'R.

To the Hon. R. C. L. Moncure, one of the judges of the supreme court of appeals of the State of Virginia:

The petition of E. E. Downham and Henry Green, partners, trading under the firm name of Downham & Co., respectfully represents—

That they are aggrieved by a final judgment of the circuit court of Alexandria County, rendered on the 11th day of November, 1867, wherein the City Council of Alexandria was plaintiff, and the said Downham & Co. defendants.

A transcript of the record of the judgment complained of is herewith presented, by which it will appear the case is as follows: (See case agreed in the record.)

Your petitioners assign the following errors in the judgment complained of:

First. The charter of the city of Alexandria confers power upon the council "to raise money by taxes for the use and benefit of said city, provided such laws shall not be repugnant to, or inconsistent with, the laws and constitution of the State or of the United States." (Sess. Acts 1865 and '66, page 250.)

It also confers power to tax within the city every person who keeps an ordinary, and all sellers of spirituous liquors, merchants, and traders, and also to levy taxes on incomes and on licenses of persons in the city in cases not otherwise provided for, subject, however, to the provision in the 25th section of the 4th article of the Constitution. (Sess. Acts 1865 and '66, page 251, sec. 10.)

The council having issued a license to the petitioners, and, in estimating the amount of tax thereon, included the capital employed in the purchase and sale of "beer and ale by the cask," had no right under the Constitution to impose an additional specific tax.

Second. The charter does not confer power upon the council to discriminate in favor of articles manufactured within the limits of the city and those manufactured elsewhere, when in the hands of licensed
11[2] dealers, they having failed to license separately and specifically dealers in spirituous and malt liquors by the cask, as provided by the charter. (Act of city council for raising revenue for the year 1867.)

Third. While it may be competent for the council to exempt from license any class of manufacturers or dealers they may think proper, or regulate the amount to be paid by each class, they have no power to levy a greater burden upon one member of that class than another. The license of a dealer by the act of council is estimated by his capital employed in merchandize, including "beer and ale by the cask;" but, unless it is purchased from a manufacturer doing business within the city limits, the onerous and unequal tax of $200 is imposed.

It is "inconsistent" with the license law of the State, which issues a license to dealers upon all subjects of merchandize other than spirituous and malt liquors, and levies a special tax upon the sellers of spirituous and malt liquors. (Schedule A, sec. 21 and 23, acts 1866 and '67, pages 863 and 864.)

It is not equal and uniform as required by the Constitution, as appears by the statement of the case.

This inequality is against public policy and the interests of trade, and

seems to be "inconsistent with the laws and constitution" of the State, for it is not an equal and uniform tax; and if the law is constitutional, it enables a municipal corporation by a prohibitory tax to deprive citizens of other States, and citizens of Virginia outside of the corporate limits of Alexandria, of the right to dispose of their manufactures to licensed dealers upon equal terms with citizens of the town. And for these reasons the court erred in giving judgment for plaintiff.

And for the said errors assigned, and others apparent on the record, they pray a writ of error and supersedeas to the judgment aforesaid.

DOWNHAM & CO., by
By A. & C. E. STUART,
Their Counsel.

We, A. &. C. E. Stuart, and C. W. Wattles, attorneys practising in the supreme court of appeals of Virginia, do certify that in our opinion there is sufficient matter for reversing the judgment complained of in the foregoing petttion.

A. &. C. E. STUART.
C. W. WATTLES.

Supersedeas awarded. Bond with surety to be given in the penalty of four hundred dollars, conditioned as the law directs.

R. C. L. MONCURE.

To the CLERK *of the District Court held at Fredericksburg.*
JAN'Y 29*th*, 1868.

12[3] VIRGINIA:

Pleas at the court-house in the county of Alexandria, before the judge of the circuit court for said county, on the 11th day of November, 1867:

Title.

Be it remembered, that heretofore, to wit, on the 17th day of August, 1867:

Came the City Council of Alexandria, by its attorney, and sued out of the clerk's office of the said circuit court a summons against E. E. Downham and Henry Green, partners, trading under the firm name of E. E. Downham & Co., which summons is in the words and figures following:

Summons.

The Commonwealth of Virginia, to the sheriff of Alexandria county, greeting:

We command you to summon E. E. Downham and Henry Green, partners, trading under the firm name of E. E. Downham & Co., if they be found within your bailiwick, to appear before the judge of our circuit court for our said county of Alexandria on the third Monday in August, 1867, to answer the City Council of Alexandria of a plea of debt for two hundred dollars. Damages fifty dollars. And have then there this writ.

Witness Jefferson Tacey, clerk of our said circuit court, at the court-house of said county, the 17th day of August, 1867, and in the 92d year of the commonwealth.

J. TACEY, *Clerk.*

Upon which summons the defendants accepted service, in the words and figures following:

Service.

AUGUST 17*th*, 1867.—Service accepted; and it is agreed that this case may be placed upon the docket for August term, 1867, upon an agreed statement of facts, in lieu of a special verdict, and that it shall be proceeded with as if regularly docketed for that term.

CHAS. E. STUART,
For Defendants.

And at another day, to wit, at a circuit court continued and held for said county of Alexandria, on the 23rd day of August, 1867:

13[4] Came the parties by their attorneys, and this cause is docketed by consent, and the defendants pleaded nil debet, and issue was joined, whereupon a case was agreed by them, to be argued in lieu of a special verdict, which case is in the words and figures following:

Case agreed.

That the City Council of Alexandria, the plaintiff, is a public or municipal corporation within the State of Virginia, duly incorporated by an act of the general assembly of the said State, passed January 25th, 1866, and entitled "An act to amend the charter of the city of Alexandria."

That the said defendants, E. E. Downham and Henry Green, are partners, trading and doing business under the firm name of E. E. Downham & Co., in the said city of Alexandria, where, on the first day of June, 1867, and at the institution of this suit, they were conducting the business of liquor merchants and commission merchants, and at the same time dealing on commission in beer and ale by the cask which was not manufactured in the city of Alexandria, and which was brought here for sale.

That the said "the city council of Alexandria," on the 8th day of June, 1867, passed an ordinance for raising a revenue for the said year, whereby, amongst other things, a certain license tax, proportioned to the capital invested, is imposed upon all merchants commencing business, and a certain license tax, proportioned to their sales, is imposed upon all merchants who have been carrying on business for one year prior to the first day of June. The same ordinance imposes a specific license tax on commission merchants commencing business, and a license tax proportioned to the commissions received by those who have been doing business for one year prior to the first day of June. This ordinance also imposes a license tax of two hundred dollars "on all agents or dealers in beer or ale by the cask, not manufactured in this city (Alexandria), and brought here for sale."

That the said defendants heretofore obtained from the mayor of Alexandria, who was authorized to issue the same, a license as merchants and commission merchants for the year ending June 1st, 1868, for which they paid the sum of $70.

That the said defendants have never, as required by the terms of the said revenue ordinance, paid the said sum of two hundred dollars, and obtained a license to deal in beer and ale by the cask which was not manufactured in Alexandria City, and which was brought to said city for sale.

The parties waiving all matters of form and pleading, desire to present to the court for decision the following questions, to wit:

First. Has the city council of Alexandria exceeded its authority in imposing this license tax upon dealers in foreign ale or beer?

Second. Can the license of the defendants, as merchants and
14[5] commission merchants, authorize them to deal in ale or beer by the cask, which ale or beer is not manufactured in Alexandria, and which is brought here for sale, when the said ordinance imposes a specific license tax upon that particular branch of trade?

If the court should be of opinion that the law is for the plaintiff, then judgment is to be entered against the defendants for two hundred dollars and costs. If, however, the court should be of opinion that the law is against the plaintiff, then judgment for costs is to be entered for the defendants.

And the said parties further agree that all acts of the legislature of Virginia, and all laws and ordinances of the city council of Alexandria, which either party may deem material, may be read from the printed statutes and laws of the said State and corporation, to have the same effect as if they were transcribed with this statement.

And it is further agreed that judgment may be entered in vacation as of this term.

D. L. SMOOT,
Att'y for Pl'ff.
CHARLES E. STUART,
Att'y for Def'ts.

And now, at this day, to wit, at a circuit court held for the said county of Alexandria, at the court-house of said county, on the 11th day of November, 1867:

Came the parties by their attorneys, and thereupon the matters of law arising upon the case agreed in this cause, in lieu of a special verdict, being argued, it seems to the court upon the whole matter therein contained that the law is for the plaintiff.

Judgment.

Therefore it is considered by the court that the plaintiff recover against the defendants two hundred dollars, the debt aforesaid, and its costs by it about its suit in this behalf expended.

Stay of execution.

And on motion of the defendants the execution of this judgment is stayed for sixty days.

From the record, a true copy.

Teste: JEFFERSON TACEY, *Clerk.*

Plaintiffs' costs $6 60. Defendants' costs 61c.

15 VIRGINIA:

At a district court held for the fourth judicial district, at the court-house in the town of Fredericksburg, on Thursday, January 7th, 1869:

E. E. DOWNHAM & HENRY GREEN, PARTNERS, UNDER the name & firm of E. E. Downham & Co., plaintiffs,
against
THE CITY COUNCIL OF ALEXANDRIA, DEFENDANTS.

Upon a writ of supersedeas to a judgment of the circuit court of Alexandria County, recovered by the defendants against the plaintiffs, on the 11th day of November, 1867.

This day came the parties by their counsel, and the court having maturely considered the transcript of the record of the judgment afore-

said, and the arguments of counsel, is of opinion that there is no error in the said judgment. Therefore it is considered that the same be affirmed, and that the plaintiffs pay to the defendants their costs by them about their defence in this behalf expended, and also one dollar damages, the court being of opinion that the ordinance of the city council of Alexandria is not in violation of the Constitution of the United States or of the State of Virginia.

Which is ordered to be certified to the said circuit court.

STATE OF VIRGINIA, *Fredericksburg, to wit:*

I, John James Chew, clerk of the district court for the fourth judicial district of Virginia, do hereby certify that the printed pages from one to five inclusive, hereto annexed, and the manuscript copy of the final judgment of said court also hereto annexed, contain a true transcript of the record in the case of E. E. Downham & Co., plaintiffs in error, against the City Council of Alexandria, defendant in error, as the same remains on the files of the said district court; that the said court is the highest court of law of said State in which a decision in said suit could be had; that there was drawn in question the validity of an ordinance of the city council of Alexandria, passed by and under authority of an act of the legislature of Virginia, on the ground of its being repugnant to the Constitution & laws of the United States, the said decision being in favor of such validity.

16

In testimony whereof, I hereunto subscribe my name as clerk of said court and affix the seal of the said district court this fifth day of March A. D. 1869.

[SEAL.] J. J. CHEW, *Clerk.*

STATE OF VIRGINIA, *Fredericksburg, to wit:*

I, Richard C. L. Moncure, presiding judge of the district court for the fourth judicial district of Virginia, do hereby certify that John James Chew, whose name is signed to the foregoing certificate, is now, and was at the time of signing the same, the clerk of the said district court.

Given under my hand this day of March, 1869.

17 STATE OF VIRGINIA, *Fredericksburg, to wit:*

In obedience to the writ of error of the Supreme Court of the United States herewith returned, I, William E. Straight, clerk of the district court of appeals for the 4th district of Virginia, do hereby certify that the [the] foregoing is a true transcript from the records of the said court, in the cause of E. E. Downham & Co., appellants, vs. the City Council of Alexandria, appellees, as they remain in my office.

Given under my hand and the seal of the said court, this 15th day of July, A. D. one thousand eight hundred & sixty-nine.

[SEAL.] WM. E. STRAIGHT, *Clerk.*

STATE OF VIRGINIA, *Fredericksburg, to wit:*

I, H. B. Burnham, presiding judge of the district court for the fourth judicial district of Virginia, do hereby certify that William E. Straight, whos name is signed to the foregoing certificate, is now, and was at the time of signing the same, the clerk of the said district court.

Given under my hand this 17th day of July, A. D. 1869.

H. B. BURNHAM.

(Indorsement on record:) Virginia, 4th judicial district court. No. 244. E. E. Downham and Henry Green, partners, as Downham & Co., plaintiffs in error, vs. the City Council of Alexandria.

Filed 29th July, 1869.

In the Supreme Court

OF

THE UNITED STATES.

DOWNHAM & Co., Plaintiffs in Error.

vs.

CITY COUNCIL OF ALEXANDRIA, Defendants in Error.

Brief of the Defendant in Error.

FACTS OF THE CASE.

On June 8th, 1867, the City Council of Alexandria, in order to raise funds to pay off the interest upon a debt of about twelve hundred and fifty thousand dollars and defray the current expenses of the city government, passed an ordinance whereby amongst other things they imposed a license tax of two hundred dollars "on agents or dealers in beer or ale by the cask not manufactured in Alexandria and brought there for sale." The plaintiffs in error were liable to this license tax, but refused to pay the same upon the grounds that the tax was unconstitutional, &c. The defendant in error brought suit against them in the Circuit Court of Alexandria county, Virginia, for two hundred dollars, the amount of the tax, and the case was argued upon the statement of agreed facts contained in the record. The Circuit Court decided the controversy in favor of the city, upon which Downham & Co. appealed to the District Court of Appeals for the fourth judicial district of Virginia, where the decision of the Circuit Court was affirmed.

Upon the application of Downham & Co. a writ of error was awarded by this court to the judgment of the District Court of Appeals, and at the last term of this court the city of Alexandria moved to dismiss the appeal, because there was a higher court in the State of Virginia than the District Court of Appeals in which a decision could have been had

n this cause, which involved the constitutionality of a law and the right of a corporation to levy taxes.

The motion to dismiss was denied, and the case now comes up for argument upon its merits, in which, with the permission of the court, the defendant in error will insist upon the following

POINTS OF LAW.

First: That this court has not jurisdiction. Wilson vs. Life and Fire Ins. Co., 12 Peters, 140; 2 Peters, 449; 7 Howard, 260; 12 Howard, 98; 3 Wheaton, 246; 11 Howard, 437, and the Constitution and laws of Virginia relating to appeals, &c.

Second: That the ordinance or law in question is not abstractly unconstitutional, and that the facts of this case do not show a collision with the Constitution nor an interference with the constitutional legislation of Congress. The license cases in 5 Howard, Paul and Virginia, 8 Wallace, 168; Woodruff vs. Parham, 8 Wallace, 123; Hinton vs. Lott, 8 Wallace, 148.

D. L. SMOOT,
Attorney for the City Council of Alexandria.

Clifford

IN THE SUPREME COURT
OF
THE UNITED STATES.

DECEMBER TERM, 1869.

No. 244.

DOWNHAM & Co., Plaintiffs in Error.

vs.

THE CITY COUNCIL OF ALEXANDRIA.

BRIEF OF PLAINTIFFS IN ERROR.

FACTS OF THE CASE.

This case was heard in the Courts of Virginia, upon an agreed statement of facts, which was as follows: Downham & Co. were Liquor and Commission merchants, in the city of Alexandria and State of Virginia, and sold as Commission merchants ale and beer in casks which were not manufactured in the city of Alexandria, but brought there for sale.

The City Council of Alexandria on June the 8th, 1867, passed an ordinance for *raising revenue*, whereby amongst other things, imposed a certain license-tax proportioned to the capital invested, upon all merchants commencing business, and a certain license-tax proportioned to their sales upon all merchants who had been carrying on business prior to the first day of June, 1867.

The same ordinance imposed a specific license tax on commission merchants commencing business, and a license tax proportioned to the commissions received, by those who had been doing business one year prior to the 1st day of June 1867.

This ordinance also imposed a license tax of two hundred dollars "on agents or dealers in beer or ale by the cask not manufactured in Alexandria, and brought there for sale."

The plaintiffs in error obtained from the Mayor of Alexandria, who was authorized to issue the same a license as Liquor Merchants and Com-

mission Merchants for the year ending June 1st, 1868, for which they paid $70 tax.

They refused to pay the specific tax of $200 to deal in Beer and Ale by the cask, not manufactured in Alexandria, and which was brought to the city for sale.

Hence, this action by the City Council for the specific tax of $200.

The parties waived all forms of pleading and submitted the following questions:

First. "Has the City Council of Alexandria exceeded its authority in imposing this license-tax upon dealers in foreign ale or beer?"

Second. "Can the license of the defendants as merchants and commission merchants authorize them to deal in ale or beer by the cask, which ale or beer is not manufactured in Alexandria, and which is brought here for sale, when the said ordinance imposes a specific license-tax upon that particular branch of trade?"

POINTS OF LAW.

We shall insist that the said ordinance is in direct conflict with the following provisions of the constitution of the United States:

ART. I. Sec. 8, Clause 3. The words are: "Congress shall have power to regulate commerce with foreign nations, and among the several States, and with the Indian tribes."

Also ART. IV, Sec. 2, Clause 1. "The citizens of each State shall be entitled to all privileges and immunities of the several States."

I.

The ordinance was "a revenue measure" and passed for the purposes of the Treasury of the City Council. By its broad and comprehensive terms it embraces all ales and beer, whether manufactured in other States of the Union or in foreign countries. It is manifestly a burthen on foreign commerce for the benefit of a local municipal corporation of a State. It has been by an unbroken current of decisions held that no State can impose a tax upon a commercial operation, because it is a regulation of commerce and that power has been reserved to Congress.

A municipal corporation created by a State could not therefore exercise a power, which the State could not. Moreover, the charter of the City Council giving it power "to raise money by taxes for the use and benefit of said city, provided such laws shall not be repugnant to, or inconsistent with the laws and constitution of the State, or of the United States."

The nature and extent of the power, "to regulate commerce" have been so often discussed, that we shall content ourselves with referring to the cases in which it was involved. McCulloch vs. State of Maryland 4 Wheat, 316; Brown vs. State of Maryland, 12 Wheat, 445; Gibbons vs. Ogden, 9 Wheat, page 1; Holmes vs Jennison, 14 Peters, 540; Graves vs. Slaughter, 15 id. 449; Passenger cases, 7 How, 283; Southern Steamship Co. vs. Port Wardens, &c.; 6 Wall, 31. The general principle involved in the foregoing cases was recognized by the Supreme Court in the case of Woodruff vs. Parham decided at the present term, and not reported.

II.

The tax imposed by said ordinance was in hostility to inter State commerce. It imposes a tax upon ale and beer Manufactured in other States and brought into Alexandria to be sold. The seller of this ale and beer must pay the tax in advance, and this too, whether he sells one or more casks. No justification is claimed for it, except to protect the local manufacturer, whilst the act on its face claims it to be a "revenue measure."

This power to fetter both foreign and interstate State commerce, was forseen in the formation of the constitution of the United States, and leaving to the States a power fruitful of such a source of trouble and agitation was wisely guarded against by the adoption of Art. 1, Sec. 8, cl. 3.

In addition to the cases above cited, we call attention to the language of Judge Miller in the case of Woodruff and others, vs. Parham, who referring to the power of a State to tax the produce of other States, says "we are satisfied that the question, as a distinct proposition necessary to be decided, is before us now for the first time.

"But we may be asked, is there no limit to the power of the States to tax the produce of their sister States brought within their borders? And can they so tax them as to drive them out or altogether prevent their introduction or their transit over their teritory?"

"The case before us is a simple tax on sales of merchandise imposed alike upon all sales made in Mobile, whether the sales be made by a citizen of Alabama or another State, and whether the goods sold are the produce of that State or some other. There is no attempt to discriminate injuriously against the products of other States or the rights of their citizens, and the case is not, therefore an attempt to fetter commerce among the States, or to deprive the citizens of other States of any privi-

lege or immunity, possessed by citizens of Alabama. But a law having such operation would, in our opinion, be an infringement of the provisions of the Constitution which relate to those subjects and therefore void."

In this connection we refer also the case of

Crandall vs. State of Nevada, 6 Wall 35.

The case of Hinson vs. Lott, decided at the present term reiterates the principal announced in Woodruff vs. Parham. Judge Miller says "The tax in the case before us, if it were of the character we have suggested, discriminating adversely to the products af all other States in favor of those of Alabama, and involving a principal which might lead to actual commercial non-intercourse, would, in our opinion, belong to that class of legislation and be forbidden by the clause of Constitution just mentioned."

Now, what is the effect of the Alexandria ordinance? That all ales and beers manufactured out of that city and sold therein shall pay a tax of $200. The local manufacturer is exempt therefrom. The manifest design of the ordinance was to exclude the manufacturer from other States and favor the local one. It was a hostile and discriminating law, tending to prevent free and unshackled inter State commerce.

III.

The ordinance violates also Article IV Sec. II, Cl. I, which declares

"The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States."

What are the privileges and immunities here guaranteed? The Articles of Confederation throw light upon this inquiry. Article IV provided: "The better to secure and perpetuate mutual friendship and intercourse among the people of the different States in this Union, the free inhabitants of each of these States, paupers, vagabonds, and fugitives from justice excepted, shall be entitled to all the privileges and immunities of free citizens in the several States; and the people of each State shall have free ingress and egress to and from any other State, and shall enjoy therein all the privileges of trade and commerce, subject to the same duties, impositions, and restrictions as the inhabitants thereof respectively." Prior to the adoption of these articles the Colonies had frequently resorted to hostile and discriminating legislation in regard to the products of each other. To guard against this and secure unfettered commercial intercourse and the privileges and immunities of free citizens the above Article was

adopted. Now the grand design of the people of the United States, in adopting the Federal Constitution, was, to "form a more perfect Union," than had existed under the old Confederacy. It was therefore necessary as one means in the accomplishment of this design that there should be as free and as uninterrupted an intercommunication between the inhabitants and citizens of of the different States, as between the inhabitants and citizens of the same States. The people who adopted the present Constitution did not intend that the intercourse between the people of the different States should be more limited or restricted than the States, in their corporate capacity, provided in the articles of Confederation. On the contrary, they contemplated a more perfect Union, and a more perfect and unrestricted intercourse.

Lemmon vs. the People, 20 N, Y., 562. There are but few decisions upon this Section of the constitution now under consideration. In Corfield vs. Coryell, 4 Wash., C. C., p. 371, 380, Judge Washington says: "We feel no hesitation in confining these expressions to the privileges and immunities which are in their nature, *fundamental*, which belong, of right, to the citizens of all free governments, and which have, at all times, been enjoyed by the citizens of the several States which compose this Union, from the time of their becoming free, independent, and sovereign. What these fundamental principles are, it would perhaps be more tedious than difficult to enumerate. They may, however, be all comprehended under the following general heads: protection by the gov. ernment; the enjoyment of life and liberty, with the right to acquire and possess property of every kind, and to pursue and obtain happiness and safety; subject nevertheless to such restraints as the government may justly prescribe for the general good of the whole. The right of a citizen of one State to pass through, or to reside in any other State, for purposes of trade, agriculture, professional pursuits, or otherwise; to claim the benefit of the writ of habeas corpus; to institute and maintain actions of any kind in the courts of the State; to take, hold and dispose of property, either real and personal; *and an exemption from higher taxes or impositions than are paid by the other citizens of the State*; may be mentioned as some of the particular privileges and immunities of citizens, which are clearly embraced by the general description of privileges deemed to be fundamental: to which may be added, the elective franchise as regulated and established by the laws or Constitution of the State in which it is to be exercised." The same principal has been recently an-

announced by the Supreme Court of the United States in the case of Paul vs. Virginia. Mr. Justice Field in delivering the opinion of the Court said; "It was undoubtedly the object of of the clause in question to place the citizens of each State upon the same footing with citizens of other States so far as the advantages resulting from citizenship in those States are concerned. It relieves them from the disabilities of alienage in other States; it inhibits discriminating legislation against them by other States; it gives them the right of free ingress into other States and egress from them; it insures to them in other States the same freedom possessed by the citizens of those States in the acquisition and enjoyment of property and in the pursuit of happiness; and it secures to them in other States the equal protection of their laws. It has been justly said that no provision in the Constitution has tended so strongly to constitute the citizens of the United States one people as this:" Lemmon vs. People, 20 N. Y. 607.

If we look at the operation of the Alexandria ordinance we will find it at war with the principles above announced. Let us illustrate this. The manufacturers of Ale and Beer residing in the cities of Philadelphia and Baltimore who send their products to the City of Alexandria for sale, pay in the first instance, to the City Council the same amount of tax which the Alexandria manufacturer has to pay. In addition to this general tax, the Philadelphia and Baltimore manufacturers have to pay before they can sell their products, a special tax of $200, from which the Alexandria manufacturer is exempt. Now, if the foreign manufacturers, add the amount of the special tax to the price of their products, it follows that they cannot compete with the Alexandria manufacturers—who can undersell them, and the result is, that they will be driven from the market, and the Alexandrian will secure a monopoly of it.

If on the other hand, they do not add the special tax to the price, it follows that they lose to the extent of the tax upon the value of their products, which loss operates in favor of the Alexandrian. The tax is clearly a discriminating one, and designed to be levied upon the products of sister States. Its principle once conceded it will be difficult to ascertain what limitation can control the exercise of this power.

We respectfully move the Court to reverse and annul the judgement of the District Court of appeals of Virginia for the fourth judicial District, affirming the judgment of the Circuit Court for Alexandria County, and direct that said last mentioned judgment be also reversed and annulled,

and judgment entered for the defendants in that court, with their costs.

Respectfully submitted.

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Cousel for Plaintiffs in Error.

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